

COMMONWEALTH OF KENTUCKY

OFFICE OF THE ATTORNEY GENERAL

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1231 Louisville Road
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Re: Project-based Section 8 rental assistance contracts

Dear Ms. Quinn:

Although this letter is not a formal opinion of this office, we hope the views expressed will be of some assistance. You have asked whether the Kentucky Housing Corporation (KHC) is the only agency with authority under Kentucky law to administer project-based Section 8 rental assistance contracts with the United States Department of Housing and Urban Development (HUD) in Kentucky. We believe that it is.

The project-based Section 8 rental assistance program, created by the Housing and Community Development Act of 1974, enables HUD or its contract administrator to enter into contracts with property owners to subsidize housing units in specific apartment complexes for those in financial need. The KHC has served as contract administrator for Kentucky since September 1, 2000, overseeing over 22,799 units in 379 properties statewide. The property owners must establish appropriate tenant selection policies for the units, based on area median income, and take applications for rental assistance. The contract administrator must ensure that all parties adhere to the requirements of the program. The KHC, in its capacity as contract administrator, conducts annual on-site visits to

http://www.kyhousing.org/full.aspx?id=3930, retrieved October 13, 2011.



the properties, performs monthly desk reviews, adjusts rents and reviews utility allowances, and provides advice and assistance to tenants and property owners.²

The KHC is charged by KRS 198A.035(1) with overseeing the development and implementation of Kentucky's statewide housing policy. The state housing policy is mandated by KRS 198A.025 in order to "[e]ncourage the availability of decent and affordable housing for all Kentucky residents," to "[i]dentify the basic housing needs of all Kentuckians," to "[c]oordinate housing activities and services among state departments and agencies," to "[e]ncourage and strengthen collaborative planning and partnerships among social service providers, all levels of government, and the public and private sectors, including for-profit and nonprofit organization, in the production of affordable housing," to "[c]oordinate housing into comprehensive community and economic development strategies at the state and local levels," and to "[d]iscourage housing policies or strategies which concentrate affordable housing in limited sections of metropolitan areas and county jurisdiction."

In fulfilling its statutory purposes, the KHC has the power "to enter into agreements or other transactions with any federal, state, or local governmental agency for the purpose of providing adequate living quarters for [lower- and moderate-income] persons and families in cities and counties where a need has been found for such housing and where no local housing authorities or other organizations exist to fill such need." KRS 198A.040(10). It also has the power "[t]o provide technical and advisory services to sponsors of residential housing and to residents and potential residents thereof," "[t]o promote research and development in scientific methods of constructing low cost residential housing of high durability," and "[t]o encourage community organizations to participate in residential housing development." KRS 198A.040(13)-(15). Furthermore, KRS 198A.040(16) gives the KHC the power "[t]o make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, or other organization or entity, necessary to accomplish the purposes of this chapter." As mentioned above, the purposes of Chapter 198A include requiring the KHC to implement the comprehensive statewide housing policy.

² http://www.kyhousing.org/page.aspx?id=657, retrieved October 11, 2011.

Where a comprehensive scheme established by statute places the regulation of a subject under the jurisdiction of a particular agency, regulation of that subject by other entities is preempted. OAG 11-003. The KHC's duty to develop and implement a comprehensive state housing policy presupposes the ability to assess financial conditions and coordinate housing assistance throughout the Commonwealth. Since the administration of project-based rental assistance contracts in multiple Kentucky locations invokes the same need for comprehensive and coherent statewide oversight contemplated by the legislature for the KHC, we believe that the General Assembly would not have intended for any other entity to fulfill this function.

As a matter of state law, therefore, this office is aware of no entity, public or private, other than the KHC, which has been given statutory authority to conduct such an activity as administering project-based rental assistance contracts for a federal agency in the Commonwealth of Kentucky. If you have any questions, you may call this office at (502) 696-5622.

Yours very truly,

JACK CONWAY ATTORNEY GENERAL

James M. Herrick

Assistant Attorney General

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